IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Dated this the 26th day of May, 1998

BEFORE

THE HON'BLE MR.JUSTICE V.P.MOHAN KUMAR

WRIT PETITIONS Nos.5255- 5265 & 5308 - 5313/1997

BETWEEN:

1. Dr.M.V.Shetty Memorial Trust, Mangalore by its Secretary Dr.M.R.Shetty.

2. Sri.A.Shama Rao Foundation, Mangalore, by its Registrar/ President Sri.A.Raghavendra Rao.

3. Vikas Education Trust, Mangalore (Regd), by its Secretary Sri.K.C.Naik.

4. Laxmi Memorial Education Trust, Mangalore, by its Secretary Dr.S.Prabhu.

5. K.Pandyaraja Ballal Charitable Trust, Mangalore by its Managing Trustee, Dr.K.Ratnaraj Ballal.

6. The Mangalore Educational and Charitable Trust, Mangalore, represented by Dr.Amarnath Sorke.

7. Fr.Mullar's Charitable Trust, Mangalore, represented by Dr.J.N.Shetty.

8. Karnataka Educational and Charitable Trust, Mangalore, represented by Dr.Jeevaraj Sorke.

9. City Hospital Charitable Trust, Kadri, Mangalore, represented by Dr.Bhasker Shetty.

10. Alva's Education Foundation,
Mudabidri Dakshina Kannada,
represented by Dr.A.Mohan Alva.

11. Nitte Education Trust,
Mangalore, represented by
Sri.B.R.Hegde. ... PETITIONERS

(Sri.K.Gopal Hegde, Advocate, for
the petitioners)

A N D:

1. The Rajiv Gandhi University
of Health Sciences, represented
by its Registrar, Jayanagar-
General Hospital Complex,
4th 'T' Block, Jayanagar,
Bangalore-560 041.

2. The Mangalore University,
represented by its Registrar,
Mangalagangotri - 574 199.

3. The Chancellor,
Rajiv Gandhi University of
Health Sciences, No.1,
Raj Bhavan, Bangalore.

4. State of Karnataka, by
Secretary, DPAR, Vidhana Soudha,
Bangalore. ... RESPONDENTS

(Sri.H.B.Datar, Sr.Advocate, for
Sri.A.V.Srinivasa Reddy & Sri.S.A.Nazeer,
Advocates, for respondent No.1)

(Sri.M.I.Arun, Advocate, for respondent-2)

(Sri.N.K.Ramesh, HCGA, for respondents
Nos.3 and 4)

Writ Petitions filed under Articles 226 & 227 of the Constitution of India, praying to quash by issue of a writ of certiorari or in the nature of certiorari or any other writ or order, Rule 6 of Annexure-A as ultra vires of the power to make statutes and as unsustainable under Article 14 of the

the Constitution; (b) to quash by issue of a writ of certiorari or in the nature of certiorari or any other writ or order, Annexures-B1 to B17 as unsustainable in law as it is based on Rule 6 of Annexure-A which is invalid in law and liable to be quashed; (c) to quash by issue of a writ of certiorari or in the nature of certiorari or any other writ or order, Annexure-C as unsustainable in law as it has been issued by an incompetent authority i.e., 2nd respondent University, which has no right to demand affiliation and other fees from the petitioners; (d) to direct the 1st respondent to refund the amounts collected from the 1st, 5th and 11th petitioners by issue of a writ of mandamus or in the nature of mandamus or any other writ or order as the demand made by the 1st respondent is based on rule 6 of Annexure-A which is invalid in law and to grant such other relief or reliefs, etc.

These Writ Petitions having been heard and reserved for orders and coming on this day for pronouncement of orders, the Court pronounced the following:

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The question raised in these Writ Petitions mainly relates to the validity of Rule 6 of Annexure-A statutes adopted by the 1st respondent University under Section 62 of the Rajiv Gandhi University of Health Sciences Act, 1994, hereinafter referred to as "the 1994 Act" for brevity, in relation to

affiliation

affiliation of Colleges to the said University. The brief facts runs thus:

2. The petitioners have established and are maintaining educational institutions offering different instructions in Health Sciences. Earlier, these institutions were affiliated to Mangalore University. The details of the educational instructions offered as recited in the Writ Petitions are not relevant for resolving of the dispute in question. When, with effect from 1-6-1996, the 1st respondent University was established by enacting the Rajiv Gandhi University of Health Sciences Act, (Act No.44 of 1994), by operation of Section 5(3) thereof, the petitioners Colleges were deemed to be admitted to the privileges or affiliated to the 1st respondent University and consequently, the affilitation to the 2nd respondent University stood withdrawn. By operation of Section 62 of the Rajiv Gandhi University Act, 1994, it was declared that all statutes in operation immediately prior to 1-6-1996, shall, subject to such modifications as may be made by the Vice Chancellor with the approval of the Chancellor and the Government and to the extent it is consistent with the provisions of the 1994 Act, be deemed to be the statute made under the later 1994 Act.

Annexure-

Annexure-A is the notification issued under Section 62 of the Act by the Vice Chancellor, adopting the statute in relation to the affiliation of Colleges and Institutions and Rule 6, the infringing rule, prescribes the fees payable by the Colleges/Institutions for affiliation to the 1st respondent.

3. The petitioners allege that the 1994 Act provides Section 33, specifying the matters with respect to which statutes could be made and it does not provide for framing of the statutes regarding prescription of affiliation fee for continuance of the affiliation. Initially this was the position under Section 35 of the Karnataka Universities Act, 1976 as well, when in 1986, the Act was amended incorporating Clauses (p) and (q) to Section 35. This, according to the petitioners, enabled the 2nd respondent to frame statute to levy affiliation fee. These clauses read as hereunder:

> "(p) fees to be charged for the courses of study in the University and in the affiliated colleges and for admissions to the examinations, degrees and diplomas of the University;

(q)

(q) fees to be charged for the services rendered by the University."

But there is no corresponding provision in Section 33 of the 1994 Act to levy affiliation fee. Therefore, the 1st respondent has no competence to prescribe Rule 6 in Annexure-A as there is no statutory competence to do so. Hence, such prescription is not valid in law and is beyond the power conferred under the statute.

4. After the framing of Annexure-A, the 1st respondent University issued Annexures-B1 to B17 to the petitioners demanding affiliation fee. Some of the petitioners paid the same under protest, whereas the others did not. It is also complained that by Annexure-C, the 2nd respondent Mangalore University has also demanded the affiliation fee. This is also challenged as invalid, because, on and after the affiliation to the 1st respondent University, the 2nd respondent University cannot claim any affiliation fee.

5. The 1st respondent has filed a detailed statement of objections. They submit as hereunder:

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Section 4 sub-clauses (vii) and (xv), the Rajiv Gandhi University Health Sciences Act, 1994, deals with the power of the University to prescribe by statute or Ordinance, condition for affiliation of Colleges and fixation of fees payable. Section 33(g) and (m) of the 1994 Act contemplates providing by statutes, conditions for affiliation of Colleges, fee relating to affiliation and disaffiliation of Colleges, and such other matters as are required to be done under the Act. It is contended that these statutory provisions do cloth the 1st respondent with power to frame the infringing statute. The respondent then relies on Sections 62 and 64 of the 1994 Act to contend that the statute framed under the Karnataka State Universities Act, 1976, with such modifications made by the Vice Chancellor is applicable to the 1st respondent and that Annexure-1 thus made has been assented to by the Chancellor on 14-10-1996. The Inter University Board of the Universities constituted under the Karnataka Universities Act, 1976, at its meeting held in 1992, had considered the fee structure in various constituent Universities and after adverting to the insistence of various financing agencies of the Universities like Government, U.G.C, etc., recommended the enhancement of the free structure prevalent including the affiliation fees be revised. In this behalf, it took note of

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the fact that there has been increase in the cost of establishment, material, printing, transport, communication, etc., over the years resulting in the diversion of funds earmarked for other developmental works. The 1st respondent is not eligible for any kind of financial assistance from the U.G.C until it completes five years and the State Government has also not provided adequate grant to the 1st respondent. For the year 1996-97, it has provided only Rs.100 lakhs whereas for the year 1997-98, it has provided Rs.120 lakhs.

6. The 1st respondent is the only University in the State established for the proper and systematic instruction for teaching, training and research in Medicine and Indian System of Medicine. Expenditure on Administration, Management and conduct of Examination throughout the State is not comparable with other established Universities in the State. Examination and Finance Branches have been computerised for the speedy service to the students and Colleges. Part of the Administration is also computerised. An University of this size and jurisdiction, required large number of staff and it will have to establish regional centres besides starting post graduate departments. All this

involves

involves huge sums of money (A Medical College under the Government has an Annual Budget of Rs.1.5 crores.

7. After the establishment of the University, the affiliation statutes of Bangalore University which also prescribes fee for affiliation based on the IUB Sub-Committee report of 1991 was reviewed by this University keeping in view the increase in cost since 1991. The affiliation fee has been modified and notified in October, 1996 with the approval of the Chancellor obtained through the State Government.

8. The University has found it difficult to manage its affairs within the actual receipts. As against a total receipts of Rs.401 lakhs from Government, Eligibility, Registration, Affiliation and Examination Fees the estimated total expenditure is around Rs.1405 lakhs during 1997-98. The total estimated expenditure for 1997-98 exclusively for academic activities including conduct of examination besides the proposed expenditure on establishment, maintenance, development of the Campus works out to Rs.7.08 crores as detailed below:-

Printing

	(in lakhs)
Printing & Stationery	50
Purchases of computers and Allied equipments	30
Furnishing computer centre	3
Conference & Seminars	2
T.A. & D.A.to members of the Authorities	75
Meeting expenses	5
Examination charges	300
Postage & Telegram	2
T.A to University Staff	1
Purchase of Audio Visuals and other conference equipments	10
Advertisements regarding affiliation, etc.	5
Publication	20
Training, teachers & continuation Education	20
Research	20
Refresher course for non-teaching professionals of Health Sciences	40
Purchase of Library Books and other facilities	60
Legal charges	15
Net working of Library and other facilities	50
TOTAL	708

9. In the first year of its inception the Rajiv Gandhi University has conducted several workshop involving

involving teachers, principals of colleges in the matter of review of syllabi and curriculum and matters pertaining to conduct of examination. The University had not collected any Registration fee from the participants. The total expenditure on these workshop/seminars is borne by the University itself. In order to establish contact with all the affiliated colleges and maintain continuity of contact, state of Art facilities like V-sat, E-Mail have been established at a considerable cost. Erstwhile Hospital building is renovated for the purpose of installing the University administrative, Examination and Finance Wing and a big hall for use at the time of Evaluation of Answer Scripts, etc., has been put up at a total cost of Rupees One Crore. Keeping all these facts in view and especially in the matter of affiliation, the committee noted that Universities are spending quite a lot of money for correspondence, transportation and local inspection etc., and suggested a revision in affiliation fees.

10. The recommendation of the Committee was adopted with certain modification by both Mysore and Bangalore Universities and notified on 10-1-92 and 10-5-96 respectively. The Rajiv Gandhi University of Health Sciences, Karnataka, Act provides

for

for adaption of statutes under Karnataka State Universities Act by the First Vice-Chancellor. The Vice-Chancellor perused the recommendation of the Inter-University Board Sub-Committee meeting held five years ago, the reviewed fee structure in conventional Universities and also the neighbouring State of Tamil Nadu M.G.R.Medical University and other Universities and adapted the Affiliation Statutes under KSUA with the modified fee structure with the prior approval of the Chancellor. The Government has conveyed the approval to the modified statutes in their letter HFW/420/MSF, dated 17-10-1996. The modification in fee structure is not arbitrary. The University is not making any profit out of the fee collected.

11. These respondents submit that the notification prescribing the fee is neither arbitrary nor unreasonable and the same is in tune with the prevailing costs of various services to be rendered by these respondents. The same is based on the prevailing costs to be incurred by these respondents in discharge of its functions under various categories. The same has been determined by the academic bodies like inter-University Board and the same has been accepted by the Chancellor on the recommendation

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of the Government. Payment of affiliation fee or other fee is an obligation under the statutes in order to enable the University and the various bodies of the Universities to carry out their functions to maintain the highest academic standards.

12. It is further contended that the 1st respondent has exercised its power vested in them under the statutes and hence Annexure-A is not an ultra-vires Act. The fee stipulated is not unreasonable. The fee collected is not disproportionate to the service rendered as well.

13. The 1st respondent has filed an additional statement of objections setting forth the details of receipts and expenditure for the academic year 1997-98. It is disclosed therefrom that the total receipt was Rs.501.46 lakhs while the expenditure was Rs.706.25 lakhs. It is also pointed out that no amount is spent towards any capital expenditure. A further additional statement of objection was again filed on 11-11-1997 stating further details of the expenditure incurred by the 1st respondent. Annexur-1 to Annexure-7 were also produced to support the averments. The estimated expenditure

on

on salaries with admissible allowances for academic and examination branch is given in Annexure-1. Annexure-2 is a statement of accounts of expenditure incurred on computer centre for academic wing. Annexure-3 is a statement of accounts of expenditure on computers for examination wing. Annexure-4 is a statement giving details of travelling allowances and dearness allowances for conduct of meeting of authorities and its committees. Annexure-5 is a statement showing the details of expenditure towards local enquiry committee for inspection of colleges. Annexures-6 and 7 are the statements showing the details of proposed expenditure for the conduct of University Examination for 1996-97 and 1997-98.

14. The following points were formulated in the Writ Petitions and in the course of arguments to sustain the attack on Annexure-A and consequential notices:

(i) There is no power vested with the 1st respondent under the 1994 Act to levy affiliation fee from the petitioners;

(ii) As the 1994 Act do not provide for levy of affiliation fee, the Vice-Chancellor of the 1st respondent University has no power to frame Rule 6 of the Annexure-A statutes;

(iii)

(iii) The fee fixed under Annexure-A is unreasonably high and is arbitrary. The same has been fixed without considering the question whether it could be levied from the students;

(iv) There is no quid pro quo for the levy of affiliation by the 1st respondent;

(v) As can be seen from Annexure-D, the fee levied by the 2nd respondent for affiliation is much less than what is being levied by the 1st respondent. If the same was found sufficient hitherto by the 2nd respondent, then it is not possible to justify the hike by its successor the 1st respondent;

(vi) The power to levy fee was expressly conferred by the Karnataka State Universities Act, 1976, on the 2nd respondent only after the amendment made in 1986. But when the 1994 Act was enacted, such similar power is conspicuously absent. It means, there is no statutory authority vested with the Vice-Chancellor to frame Rule 6 in Annexure-A statutes.

(vii) After the operation of Section 5(3) of the 1994 Act, the 2nd respondent has no power to issue Annexure-C.

15. I

15. I have heard Mr.Gopal Hegde, learned counsel for the petitioner, Mr.H.B.Datar, learned Senior Counsel on behalf of the 1st respondent, Mr.M.I.Arun, appearing for the 2nd respondent, and the learned Government Advocate, at length.

16. We will first advert to the contentions urged to the effect that the 1st respondent has no statutory power to issue Annexure-A statutes. The argument is developed by the learned counsel by adverting to the provisions of the 1994 Act and that of the Karnataka State Universities Act, 1976. As per Section 4(xv) of the 1994 Act, it is provided that subject to the provisions of the Act and such conditions as may be prescribed by the Statutes or Ordinances, the University may fix, demand, receive or collect such fees and other charges. According to the learned counsel, it is unlike the provisions of the 1976 Act as amended in 1986. Therein it is provided that subject to the provisions of the Act, statute may provide for fees to be charged for the services rendered by the University. Therefore, according to the learned counsel for the petitioners, by virtue of this enabling provision, the 2nd respondent University could frame the statute fixing the affiliation fee payable. Thereafter, when by virtue of Section 5 of the 1994 Act,

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all Colleges affiliated to the Universities of Mysore, Bangalore, Karnataka, Mangalore, Gulbarga and Kuvempu Universities were deemed to be admitted to the 1st respondent University, then in the absence of a corresponding provision corresponding to Section 35(q) of the 1976 Act in the 1994 Act, no statute can be framed to levy affiliation fee nor adopt the statute of the 2nd respondent with any material modification. Continuance of the statute framed by the Universities, referred to above, made invoking Section 35(q) can be only as contemplated under Section 62 of the 1994 Act. Section 62 of the Act reads as follows:

> "62. Continuance of Statutes, Ordinances, etc.- Until Statutes, Ordinances and Rules are made under appropriate provisions of this Act, the Statutes, Ordinances, Regulations and Rules which were made under the Karnataka State Universities Act, 1976 and in force immediately before the commencement of this Act shall, subject to such adaptations or modifications as may be made therein by the Vice-Chancellor with the approval of the Chancellor obtained through the Government in so far as they are not inconsistent with the provisions of this Act be deemed to be Statutes, Ordinances, Regulations and Rules made under the appropriate provisions of this Act."

Basically,

Basically, such Statute or Ordinance should not be inconsistent with the provisions of the 1994 Act. Thus, the contention is that the absence of a section similar to Section 35(q) of the Karnataka State Universities Act, 1976, in the 1994 Act, indicates the legislative intention of denying the 1st respondent University power to enact, statutes with respect to subjects covered under Section 35(q) of the 1976 Act, referred to above. Therefore, the 1st respondent cannot adopt any of the statutes on the said subject framed by the predecessor University, as any such adoption would be inconsistent with the provisions of the 1994 Act. Therefore, Annexure-A is totally without jurisdiction.

17. Section 62 of the Act, referred to above, re-arranged and should be read as follows:

> "Until Statutes, Ordinances and Rules are made under appropriate provisions of this Act, the Statutes, Ordinances, Regulations and Rules which are made under the Karnataka State Universities Act, 1976 and in force immediately before the commencement of this Act, shall, in so far as they are not inconsistent with the provisions of this Act may deem to be Statutes, Ordinances, Regulations

> Regulations and Rules made under the appropriate provisions of this Act, subject to such adoptions or modifications made therein by the Vice-Chancellor under the approval of the Chancellor obtained by the Government."

In this context, we may notice that unless there is any specific inconsistency pointed out with reference to the provisions of 1994 Act, the Statutes, Ordinances, Regulations and Rules made under the Karnataka State Universities Act, 1976 immediately in force before the commencement of the 1994 Act would be in force, subject to such adoptions and modifications. Before embarking to consider this issue, we may keep in mind the following observations made by Lord Selborne in CALEDONIAN RAILWAY v. NORTH BRITISH RAILWAY (1881) 6 App.Cases 114:

> "The mere literal interpretation of a statute ought not to prevail if it is opposed to the intention of the legislature as apparent by the Statute, and if the words are sufficiently flexible to admit of some other construction by which that intention can be better effectuated."

Unless the plain meaning to the word being assigned would lead to any absurdity, then alone it can

can be rejected and the restricted interpretation placed thereon. To put it differently, we should examine whether any of the provisions of the 1994 Act would save the power of the 1st respondent University to exercise the powers its predecessor enjoyed under Section 35(q) of the 1976 Act. Admittedly, statutes were earlier framed for levy and collection of affiliation fee under the Karnataka Universities Act, 1976 by the 2nd respondent and they were in force immediately prior to the commencement of the 1994 Act. Now, the 1994 Act contains Section 4(vii) and 4(xv) which reads thus:

> "4(vii) to affiliate or recognise colleges and institutions and to withdraw such affiliation or recognition;"
>
> "4(xv) to fix fees and demand and collect such fees as may be prescribed;"

It means the 1st respondent University has powers to prescribe statutes in the matter of affiliation as also fixing fees and demand and collect such fees thus fixed. Again, Section 33(g) of 1994 Act reads thus:

> "the Conditions of affiliation of Colleges and those under which affiliations may be withdrawn;"

Thus,

Thus, a conjoint reading of these provisions indicate that Section 4(vii) and Section 4(xv) read with Section 33(g) confers powers on the 1st respondent University to prescribe conditions for affiliation of Colleges and prescribe fees as well. "Prescribe" has been defined at Section 2(h) to mean prescribe by Statutes, Ordinances or Rules. Therefore, it can be held that there is power under the 1994 Act as well to prescribe by Statute, condition for affiliation as also stipulating fees in general. To interpret that the expression "fee" used in Section 4(xv), referred to above, would mean "affiliation fee" as well, cannot be described as an impossible construction.

18. If so, can it be said that in the absence of a specific clause like Section 35(q) of the Karnataka University Act, there is any inconsistency in the 1994 Act ? What is meant by the word "Inconsistent" ? The following meaning given in Venkatramiah's Law Lexicon may be adverted to:

> "Inconsistent.- A thing is said to be consistent if it is in conformity with or congruous with the other. In other words, what is not inconsistent is consistent. The word "inconsistency" is used with reference to two laws, a

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stage where there is an impossibility of simultaneous operation of both laws. It signifies the idea of incompatibility. In case, therefore, where two laws can exist side by side, one law cannot be said to be inconsistent with the other.- Smt.Chandra Rani v. Vikram Singh (1979) 5 A.L.R.56 at p.83 (All).

In Clyde Engineering Co.Ltd.v. Cowburn, (1926) 37 Com.W.L.R.466, the learned Judge observed:

"When is a law "inconsistent" with another law ? Etymologically, I presume that things are inconsistent when they cannot stand together at the same time; and one law is inconsistent with another law when the command or power or other provision is one law conflicts directly with the command or power or provision in the other. Where two Legislatures operate over the same territory and come into collision, it is necessary that one should prevail; but the necessity is confined to actual collision, as when one Legislature sayd 'do' and the other sayd 'don't'."

'According to Griffith, C.J., "the test of inconsistency is, of course, whether a proposed act is consistent with obedience to both directions'. The opinion of the majority (Knox, C.J., and Gavan Duffy, J., with the concurrence of Isaacs, J.) was:

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'Two enactments may be inconsistent although obedience to each of them may be possible without disobeying the other. Statutes may do more than impose duties; they may, for instance, confer rights; and one statute is inconsistent with another when it takes away a right conferred by that other even though the right be one which might be waived or abandoned without disobeying the statute which conferred it" -' (Indian Oil Corporation v. C.D.Singh, (1972) 24 F.L.R.372 at pp.382-83."

Again we may advert to STEWART v. BROJENDRA KISHORE (AIR 1939 Cal 628) wherein it is stated as hereunder:

"It is sometimes said that two laws cannot be said to be properly repugnant unless there is a direct conflict between them, as when one says 'do' and the other 'don't'. There is no true repugnancy, according to this view, if it is possible to obey both the laws. For reasons which we shall set forth presently, we think that this is too narrow a test, there may well be cases of repugnancy where both laws say 'don't' but in different ways. For example, one law may say "No person shall sell liquor by retail, that is, in quantities of less than five gallons at a time and another law may say 'No person shall sell liquor by retail, that is,

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in quantities of less than ten gallons at a time. Here, it is obviously possible to obey both laws by obeying the more stringent of the two, namely, the second one; yet it is equally obvious that the two laws are repugnant, for to the extent to which a citizen is compelled to obey one of them, the other, though not actually disobeyed, is nullified."

Examining the question in regard to ascertaining as to whether two enactments are inconsistent, the Supreme Court in STATE OF U.P.v.BASTI SUGAR MILLS CO.LTD (AIR 1961 SC 420) stated thus:

"Dealing with the canons of statutory construction the learned Judge observed: No doubt this result is arrived at by placing a particular construction on the provisions of that section but we think we are justified in doing so. As Mr.Pathak himself suggested in the course of his arguments, we must try and construe a statute in such a way, where it is possible to so construe it, as to obviate a conflict between its various provisions and also so as to render the statute or any of its provisions constitutional."

This method of construction of the statute has been followed by the Supreme Court again in BASTI SUGAR MILLS v. STATE OF U.P (AIR 1979 SC 262).

Thus,

Thus, there should be express prohibition in the 1994 Act to the very concept of levying of the affiliation fee from the affiliated Colleges. Such an inference is impermissible when such power is traceable to Section 4(xv) of the 1994 Act. It is the duty of the Court to give a harmonious interpretation to a provision of the statute and it ought not readily assume inconsistency. The Court cannot interpret the expression so as it is rendered a "dead letter", or "useless lumber" in the statute. It is not the object of the Court to destroy the object with which the Legislature enacted a statute. The Court should attempt to save the power conferred under the statute and not to destroy the purport with which it was enacted.

19. Now, Section 4(xv) enables the University to frame statutes for fixing the fees. Section 33(g) empowers it to frame statutes laying down the condition for affiliation as well. If so, there can be no inconsistency to be spelt out in the 1994 Act excluding the continued operation of the statutes, Ordinances, Regulations and Rules made under the Karnataka Universities Act, 1976 laying down the conditions for affiliation and fixing affiliation fee that were in operation as on 1-6-1996. Annexure-A is

is the modification effected by the Vice-Chancellor thereon which has been approved by the Chancellor obtained through the Government on 14-10-1996.

20. Mr.Gopal Hegde urged that Section 45 of the 1994 Act lays down the condition for affiliation and it does not speak of payment of any fees. The condition to be framed by means of statute by the University is over and above the condition made mention of in Section 45. When Section 33 clearly postulates framing of statutes laying down the condition for affiliation/withdrawal of affiliation, it cannot be contended that that power is eclipsed by enacting of Section 45 in the Act.

21. Yet another contention was urged by the counsel relying on C.W.T.GUJARAT-III v. ELLIS BRIDGE GYMKHANA ETC, ETC (1998(1) SCC 384) to the effect that to trace power to levy affiliation fee, this by interpretation would be attempting to trace power to levy the same by implication. In particular, he relied on the following passage:

> "5. The rule of construction of a charging section is that before taxing any person, it must be shown that he falls within the ambit of the charging Section by clear words used in the

> the section. No one can be taxed by implication. A charging section has to be construed strictly. If a person has not been brought within the ambit of the charging section by clear words, he cannot be taxed at all."

I do not think that the decision has any application to the instant case. There is specific provision in Section 4(xv) of the 1994 Act to enact statutes to levy fee, which expression will include affiliation fee as well. It is to be noted that there is no specific provision in the 1976 Act as amended, enabling the University to frame statute to levy affiliation fee; likewise Section 41(d) thereof speaks merely that the income received by the University from fees and charges to be University fund. The expression used is merely "fee". If affiliation fee is a separate category from fee, a provision should have been made in Section 41 constituting the same to be the fund of the University; otherwise, the University will not be entitled to retain the same. Thus statute indicates that the expression "fee" obviously would include the affiliation fee as well. Similar is the provision in 1994 Act, viz., Section 37(1) which states that the income from fees, endowments and grants to be the University fund. Thus, the University can,by existence of

specific

specific provision in this behalf, enact statutes to levy fees which includes affiliation fee as well. It thus, is not a levy by implication, as contended by Mr.Gopal Hegde.

22. We will now advert to the next leg of the contention. This relates to the largest question that the levy is in essence a tax and not a fee and as such, there is no statutory competency. To begin with, learned counsel Mr.Gopal Hegde relies on the following statement in MUHAMMADBHAI v. STATE OF GUJARAT (AIR 1962 SC 1517), to contend that the concept of levy of tax and fee is one and the same. The relevant sentence reads thus:

> "Fees are also included within the taxing power of the Legislature in its broadest sense."

As we have seen, that the levy herein is described only as a fee, this contention need not detain us any further.

23. There are a catena of decisions which have laid down the test to ascertain whether a levy partakes the character of tax or fee. The first ever leading decision on this subject, after the advent of the Constitution is THE COMMISSIONER, HINDU

HINDU RELIGIOUS ENDOWMENTS, MADRAS v. SRI LAKSHMINDRA THIRTHA SWAMIAR OF SRI SHIRUR MUTT (AIR 1954 SC 282) and the recent one being KRISHI UPAJ MANDI SAMITI AND OTHERS v. ORIENT PAPER & INDUSTRIES LTD.((1995) I SCC 655). The essential characteristics of a tax are that:

(i) It is imposed under statutory power without the tax payer's consent and the payment is enforced by law;

(ii) It is an imposition made for public purpose without reference to any special benefit conferred on the payer of the tax; and

(iii) It is a common burden; the quantum of imposition upon the tax payer depends generally upon his capacity to pay.

(See: INDIAN MEDICAL ASSOCIATES v. V.P SHANKAR (1995) 6 SCC 651).

We may also advert to the following passage from AIR 1954 SC 282:

"A neat definition of what "tax" means has been given by Latham C.J.of the High Court of Australia in Matthews v. Chicory Marketing Board(60 C.L.R.263, 276). "A tax", according to the learned Chief Justice, "is a compulsory exaction of money by public authority for public purposes enforceable by

by law and is not payment for services rendered". This definition brings out, in our opinion, the essential characteristics of a tax as distinguished from other forms of imposition which, in a general sense, are included within it. It is said that the essence of taxation is compulsion, that is to say, it is imposed under statutory power without the tax payer's consent and the payment is enforced by law. The second characteristic of tax is that it is an imposition made for public purpose without reference to any special benefit to be conferred on the payer of the tax. This is expressed by saying that the levy of tax is for the purposes of general revenue, which when collected forms part of the public revenues of the State. As the object of a tax is not to confer any special benefit upon any particular individual, there is, as it is said, no element of quid pro quo between the tax payer and the public authority. Another feature of taxation is that as it is a part of the common burden, the quantum of imposition upon the tax payer depends generally upon his capacity to pay.

Coming now to fees, a "fee" is generally defined to be a charge for a special service rendered to individuals by some governmental agency. The amount of fee levied is supposed to be based on the

> the expenses incurred by the Government in rendering the service, though in many cases the costs are arbitrarily assessed. Ordinarily, the fees are uniform and no account is taken of the varying abilities of different recipients to pay. These are undoubtedly some of the general characteristics, but as there may be various kinds of fees, it is not possible to formulate a definition that would be applicable to all cases."

Hence, when these tests are borne in mind and the character of the levy is examined in this case, it will not be possible to say that the instant levy is a tax. The levy herein is geared to the intention of the applicant to secure affiliation; it is for the service rendered by the University with sole reference to the benefit conferred on the payer of the fee; there is no element of public purpose involved in this case; the burden imposed is solely on the applicant, without any reference to his capacity to pay. It means, the present levy does not satisfy any of the tests laid down and clearly and essentially the levy is not a tax but only a fee.

24. This takes us to the next contention urged, namely, that if there is an excess levy, then it would

would partake the character of tax. But, if the ingredients referred to in the preceding paragraphs do not exist, then even if there be any excess levy, it will not automatically be rendered as a tax.

25. Mr.Gopal Hegde incidentally urged relying on S.R.I.ROLLER MILLS PVT.LTD v. UNION OF INDIA (AIR 1992 Bom 79) that a power to regulate do not confer power to levy tax or fee. In the statutory scenario we have adverted to above, in this case, this contention also does not survive for consideration.

26. The further serious contention urged was in relation to the question of quid pro quo to sustain the levy of fee. He relied on the decision of the Supreme Court, reported in AIR 1954 SC 282, referred to supra. The following paragraph therein was relied on by the learned counsel for highlighting his contention, namely:

> "If, as we hold, a fee is regarded as a sort of return or consideration for services rendered, it is absolutely necessary that the levy of fees should, on the face of the legislative provision, be co-related to the expenses incurred by Government in rendering the services. As indicated in article 110 of the Constitution,
>
> ordinarily

ordinarily there are two classes of cases where Government imposes 'fees' upon persons. In the first class of cases, Government simply grants a permission or privilege to a person to do something, which otherwise that person would not be competent to do and extracts fees either heavy or moderate from that person in return for the privilege that is conferred. A most common illustration of this type of cases is furnished by the licence fees for motor vehicles. Here the costs incurred by the Government in maintaining an office or bureau for the granting of licences may be very small and the amount of imposition that is levied is based really not upon the costs incurred by the Government but upon the benefit that the individual receives. In such cases, according to all the writers on public finance, the tax element is predominant, and if the money paid by licence holders goes for the upkeep of roads and other matters of general public utility, the licence fee cannot but be regarded as a tax."

Two other decisions also cited by the learned counsel in this behalf may be adverted to before considering the contentions further. He relied on MAHAPALIKA v. BHATTACHARYA (AIR 1968 SC 1119) to state

to state that power to tax is exercised mainly for purpose of raising revenue. He laid stress on the following passage:

> "In this context it is important to notice that the power to tax is not included in the police power in the American Municipal Law.- (Dillon on 'Municipal Corporations' Vol.IV, 5th Edn., P.2400). It has been held that the police and taxing powers of the legislature though co-existent, are distinct powers. Broadly speaking, the distinction is that the taxing power is exercised for the purpose of raising revenue and is subject to certain designated constitutional limitations, while the police power is exercised for the promotion of the public welfare by means of the regulation of dangerous or potentially dangerous businesses, occupations, or activities, and is not subject to the constitutional restrictions applicable to the taxing power. "It may consequently be said that if the primary purpose of a statute or ordinance exacting an imposition of some kind is to raise revenue, it represents an exercise of the taxing power, while if the primary purpose of such an enactment is the regulation of some particular occupation, calling or activity, it is an exercise of the police power, even if it incidentally produces revenue."(American Jurisprudence, 2nd Edn.Vol.16, p.519)."

According

According to him, in the instant case, when the element of quid pro quo is absent, it amounts to an exercise of taxing power to raise revenue and if so, in the absence of specific statutory authority, the levy has to fail. The other decision cited in this behalf is SYNTHETICS & CHEMICALS LTD. v. STATE OF U.P (AIR 1990 SC 1927). He relied on the following paragraph to buttress his contention:

> "We are of the opinion that we need not detain ourselves on the question whether the States have police power or not. We must accept the position that the States have the power to regulate the use of alcohol and that power must includepower to make provisions to prevent and/or check industrial alcohol often being used as intoxicating or drinkable alcohol. The question is whether in the garb of regulations a legislation which is in pith and substance, as we look upon the instant legislation, fee or levy which has no connection with the cost or expenses administering the regulation, can be imposed purely as regulatory measure. Judged by the pith and substance of the impugned legislation, we are definitely of the opinion that these levies cannot be treated as part of regulatory measures. In this view of the matter we do not detain ourselves with examining the numerous American decisions to which our attention was drawn by learned counsel very elaborately and thoroughly."

Power

Power to levy tax is to raise revenue and that the same is the sovereign power of the State, whereas the levy of fee is regulatory power which is traceable to police power of the State. I am of the view that once it is held that the 1st respondent has power to regulate and the legislative sanction supports the said levy, then necessarily it can impose such reasonable amount as fee and such levy partakes the character of regulation. In this behalf, it would be profitable to refer to the following passage from HAR SHANKAR v. Dy.E & T COMMR.(AIR 1975 SC 1121):

> "56. The distinction which the Constitution makes for legislative purposes between a 'tax' and a ' fee' and the characteristics of these two as also of 'excise duty' are well known. "A tax is a compulsory exaction of money by public authority for public purposes enforceable by law and is not a payment for services rendered". Per Latham, C.J. in Mathews v. Chickory Marketing Boad, 60 CLR 263, 276. A fee is a charge for special services rendered to individuals by some governmental agency and such a charge has an element in it of a quid pro quo. Commr.H.R.E.Madras v. Lakshmindra Thirtha Swamiar, 1954 SCR 1005, 1041 = (AIR 1954 SC 282 at p.295). Excise duty is primarily a duty on the production

production or manufacture of goods produced or manufactured within the country. M/s.Guruswamy & Co.v.State of Mysore, (1967) I SCR 548 = (AIR 1967 SC 1512). The amounts charged to the licences in the instant case are, evidently, neither in the nature of a tax nor of excise duty. But then, the 'Licence fee' which the State Government charged to the licensees through the medium of auctions or the 'Fixed fee' which it charged to the vendors of foreign liquor holding licences in Forms L-3, L-4 and L-5 need bear no quid pro quo to the services rendered to the licensees. The word 'fee' is not used in the Act or the Rules in the technical sense of the expression. By 'licence fee' or 'fixed fee' is meant the price or consideration which the Government charges to the licensees for parting with its privileges and granting them to the licensees. As the State can carry on a trade or business, such a charge is the normal incident of a trading or business transaction.

57. While on this question, we may with advantage cite a passage from "American Jurisprudence" (Vol.30 pages 642, 645) which is based on the decision in Gundling v. Chicago, (1899) 44 Law Ed 725; Philips v. Mobile, (1907) 52 Law Ed 578 and Richard v. Mobile (1907) 52 Law Ed 581. It says:

" the

> "the familiar principle that the imposition of license fees on useful and honourable occupations must not exceed the cost of issuing the license, plus the expense of inspecting and regulating the business licensed..."

Thus, the levy in this case is only fee and not tax as contended by the counsel.

27. The University Grants Commission Act has been enacted by the Government to constitute the University Grants Commission which co-ordinates and determines standards in the various Universities. The Commission polices the functioning of the Universities, as to whether it maintains the standards whether it properly administers and guides the Colleges affiliated to the University. It also contemplates affiliation of the Colleges to the University. Only if the College is affiliated, it comes under the purview of the U.G.C so as to enable it to be supervised and brought upto the mark. The expression "affiliation" has been defined at Sec.12A(a) of the Act as follows:

> "affiliation", together with its grammatical variations, includes in relation to a college, recognition of such college by, association of such college with, and admission of such college to the privileges of, a university;"

Thus,

Thus, unless the College is affiliated to a University, it cannot enjoy the privileges of the University. Section 22 declares that the right of conferring or granting degree shall be exercised only by a University established under a Central or States Act. If so, an affiliation to the University alone enables the College to present the student for the examination to a degree or diploma to be awarded by the University which has recognition all over. This is one of the main services rendered by the University to an affiliated College.

28. Secondly, the University is to hold the examination, to test the eligibility of the candidate to be awarded Degree/Diploma. This, in turn, conforms to the requirement of the U.G.C.Act. The University has to maintain the infrastructure to run the administration which, in turn, can ascertain whether the affiliated Colleges are maintaining the desired standards stipulated by the University Grants Commission. 'Affiliate' in essence means to prepare and present students for public examinations conducted by the recognised Authority. (See: AIR 1978 SC 344). It means, the University has the responsibility to oversee whether the Colleges affiliated to it is preparing properly the students to be presented to

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the Public Examinations conducted by it, passing at which examination alone renders them eligible to be conferred recognised Degree/Diploma. In the affidavit filed by the 1st respondent University on 11-11-1997, it has stated in detail the expenditure incurred by them in this behalf. When the totality of the fee collected and the totality of the service rendered match, such levy will not fail merely because the incidence may be arithmatically disproportionate to the service rendered. In this behalf, the Supreme Court has stated thus in P.M.ASHWATHANARAYANA SETTY v. STATE OF KARNATAKA (AIR 1989 SC 100):

> "The observations of this Court in Income-tax Officer, Shillong v. N.Takim Roy Ryabai, (1976) 3 SCR 413: (AIR 1976 SC 670) made in the context of taxation laws are worth recalling: (at p.674):
>
> "The mere fact that a tax falls more heavily on some in the same category, is not by itself a ground to render the law invalid. It is only when, within the range of its selection, the law operates unequally and cannot be justified on the basis of a valid classification that there would be a violation of Art.14."
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> (Emphasis supplied)

Again, it is held that it is not necessary that the entire amount collected as fee be expended for

for rendering service. The collector can always reserve the same for rendering service in future date. It is possible that an incidental unforseen expenditure may occur, which has also to be taken care of. As a prudent man, the Collector of the fee can reserve a sum for future expenses connected with rendering service. This cannot invalidate the whole levy. In this behalf, we may advert to the following passage in I.T.C.LTD v. STATE OF KARNATAKA (1985 (supp) SCC 476):

> "In Sreenivas General Traders v. State of A.P., this Court observed as follows: (SCC p.378-380, Paras 29 & 31)
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> With greatest respect, the decision in Kewal Krishan Puri case (1983) 4 SCC 353) does not lay down any legal principle of general applicability.
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> xx xx xx xx x
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> The traditional view that there must be actual quid pro quo for a fee has undergone a sea change in the subsequent decisions..... In determining whether a levy is a fee, the true test must be whether its primary and essential purpose is to render specific services to a specified area or class; it may be of no consequence that the State may ultimately and indirectly be benefited by it.... However, corelationship between the levy and the services rendered (sic or) expected is one of general character and not of mathematical exactitude."

When

When once it is satisfied that there is direct nexus between realisation of fee and services rendered, then the requirement of quid pro quo is satisfied. The internal management of the rendering of the service is purely within the competence of the expertise of the 1st respondent. And all that is needed is that it has to be established that the fee levied is not being diverted to any other purposes unrelated to the services being rendered.

29. It is also settled law that even if the benefits to be received is postponed, it cannot be said that there is no quid pro quo.(See AIR 1985 SC 790). Likewise, it is also not necessary that it be established that those who pay the fee should receive direct or special benefit, or advantage of the service rendered in this behalf. This aspect is made clear from the following passage in CITY CORPORATION OF CALICUT v. T.SADASIVAN (AIR 1985 SC 756)

> "It is thus well-settled by numerous recent decisions of this Court that the traditional concept in a fee of quid pro quo is undergoing a transformation and that though the fee must have relation to the services rendered, or the advantages conferred, such relation need not be

be direct, a mere casual relation may be enough. It is not necessary to establish that those who pay the fee must receive direct benefit of the services rendered for which the fee is being paid. If one who is liable to pay receives general benefit from the authority levying the fee the element of service required for collecting fee is satisfied. It is not necessary that the person liable to pay must receive some special benefit or advantage for payment of the fee."

Thus, in this case, there is no illegality in Annexure-A whereby it was adopting the statute governing the fee payable by the Colleges affiliated to the 1st respondent University and Rule 6 enacted fixing the affiliation fee thereof is valid. The same is a fee and it does not partake the character of tax and the levy is in consideration of service rendered to the affiliated Colleges by the 1st respondent.

30. Now, as regards the challenge regarding Annexure-C issued by the 2nd respondent, Mr.Arun, learned counsel for the 2nd respondent, pointed out that in view of Section 63 of the 1994 Act, students studying in courses which commenced prior to 1-6-1996, they are still affiliated to the 2nd respondent University. By virtue of Section 63(2) of the Act, the

the 2nd respondent has to conduct the examination and supervise their studies. Therefore, Annexure-C clearly comes within the ambit of Section 63(a) of the 1994 Act. As such, the same has also to be held to be valid.

31. Mr.Gopal Hegde at the end urged that the fee stipulated is exorbitantly high and the quantum requires reconsideration. But, as the levy is totally intra vires and the authority is legitimately entitled to collect excess amount to offset future expenditure, this Court cannot examine this aspect of the case. Nevertheless, this Court expresses its pious hope that the 1st respondent may take a fresh look at the quantum of affiliation fee fixed and as and when the teething troubles of the 1st respondent is complete and it settles down, consider whether a reduction is feasible in the matter.

32. There are no merits in the Writ Petitios. They are accordingly dismissed. No costs.

Sd/-
JUDGE

Pkc.